Supreme Court, U.S.
FILED

(1)

No. 97- 97 1003 JUN 18 1997

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

Kermit Franklin Junior, Isbell

-vs-

USDC District of Montana
(Lonnie Herman, Real Party in Interest)

On Petition for Writ of Certiorari
to the circuit court of
the (u)nited States of America
for the ninth circuit

Petition for Writ of Certiorari

Kermit Franklin Junior, Isbell
in care of: general delivery
at or near Kalispell, [59901]
the State of Montana, of the
(u)nited States of America
North America, Urantia.

Date: December A.D. 1997

66 pp

QUESTIONS PRESENTED FOR REVIEW

1) Whether 28 U.S.C. § 1914 requires payment or extinguishment of the district court filing fees in "credit money" or legal tender coined dollars of the "(u)nited States of America in Congress" assembled ?

2) Whether dismissal of Petitioner's verified record complaint was, or is dispositive of the material factual allegations in Case No. CV-97-54-M-DWM, district court of the united States of America, Original Article III Jurisdiction, the State of Montana District ?

3) Whether the circuit court of the (u)nited States of America correctly denied Petitioner's petition for writ of Mandamus, or Certiorari, Case No. 97-70648, by imposition of an estoppel not warranted by existing Law, or by avoidance of the justiciable controversy presented as to the lower court filing fee issue alleged adjudicated under Rule 41, F.R.CV:P. and § 2072(b) 28 U.S.C. ?

4) Whether Lonnie Herman arrested and held Petitioner to answer without authority of law in violation of 28 U.S.C. § 2007 and Bill of Rights ?

LIST OF PARTIES TO THE PROCEEDING

1) district court of the (u)nited
States of America (Office of)
Original Article III Jurisdiction
the State of Montana District
Two Zero One East Broadway Street
Missoula county, U.S. Courthouse
the State of Montana, of the
(u)nited States of America
North America, Urantia

2) Office of Clerk and Judge/Justice
circuit court of the (u)nited States
of America, ninth circuit
in care of: ninety Five Seventh Street
Post Office Box 193939
United States Post Office
San Francisco, [94119-3939]
the State of California, of the
(u)nited States of America
North America, Urantia

3) LONNIE HERMAN, Policeman
in care of: WHITEFISH MUNICIPAL
POLICE DEPARTMENT
406 2ND STREET
WHITEFISH, MT 59937

4) Kermit Franklin Junior, Isbell
in care of: general delivery
at or near Kalispell, [59901]
the State of Montana, of the
(u)nited States of America
North America, Urantia.

TABLE OF CONTENTS

Page:

Cover

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF CONTENTS . . . . . iii-iv

TABLE OF AUTHORITIES . . . . . v-xi

CONCISE STATEMENT OF JURISDICTION . . 1-4

NOTICE 5

CONSTITUTIONAL PROVISIONS:

the State of Montana: 6

the (u)nited States of America: . . 6

STATEMENT OF THE CASE 7-9

ARGUMENT 9-24

SUMMARY OF ARGUMENT 25-28

CONCLUSION 28-30

APPENDIXES:

Order - CV-97-54-M-DWM . . App A 1-3

Order - CV-97-54-M-DWM . . App B 1-4

Order - CA # 97-70648 . . . App C 1-3

TABLE OF CONTENTS

APPENDIXES: Page:

Excerpts: P.L. 99-185
99 Stat. 1177, S. 1639
99th Congress; Gold Bullion
Coin Act of 1985 . . . . . App D 1-7

Receipt from Office of Clerk
district court of united
States of America 1 April
Anno Domini, 1997 . . . . App E 1-2

END

TABLE OF AUTHORITIES

Cases: Page:

Bell v. Hood (1946)
327 U.S. 678
90 L.Ed. 939
66 S.Ct. 773
13 ALR 2d 383 . . . . . 2, 7-8, 19

Griffin v. Breckenridge (1971)
403 U.S. 88
29 L. Ed. 2d 338
91 S. Ct. 1790 28

Holt v. Indiana Mfg. Co. (1900)
176 U.S. 68
20 S. Ct. 272
44 L. Ed. 374 8

Home Bldg. & Loan Assoc. v.
Blaisdell (1934)
290 U.S. 426 21

Hurn v. Oursler
289 U.S. 238
53 S. Ct. 586
77 L. Ed. 1148 8

Keppel v. Petersburg R. Co. (1868)
14 Fed. Cas. 357, 370
(Case No. 7,722) 13

League v. De Young (1850)
52 U.S. 185, 13 L. Ed. 657 . . . 16

MacLeod v. Hoover (1925)
159 La. 244, 105 A. 305 25

TABLE OF AUTHORITIES

Cases: Page:

Memphis Bank & Trust Co. v.
Riley C. Garner (1983)
459 U.S. 392
103 S. Ct. 692
74 L. Ed. 2d 652 at 1156 24

New York v. U.S. (1992)
112 S. Ct. 2408
120 L. Ed. 2d 120
60 U.S.L.W. 4603 12

Perry v. U.S. (1935)
294 U.S. 330-381
79 L. Ed. 9121 17

Phoenix Oil Co. v.
MacKenzie Oil Co. (1932
D.C. Del.) 56 F. 2d 1070 8

Samuel Thomas, Sheriff v.
William Taylor (1869)
42 Miss. 651, 703 13

Sibron v. New York (1968)
392 U.S. 40
20 L. Ed. 2d 917
88 S. Ct. 1889
44 Ohio Ops. 2d 402 26

Stanek v. White (1927)
215 N.W. Rep. 784 16

Steward v. Kahn (1870)
78 U.S. 504 12

TABLE OF AUTHORITIES

Cases: Page:

Texas v. Interstate Comm. Com.
(1922) 258 U.S. 158
66 L. Ed. 531
42 S. Ct. 261 20

The Bank of the United States v.
Planters Bank of Georgia
6 L. Ed. (9 Wheat) 244 18

Thompson v. Butler (1878)
95 U.S. 540 at 542
S. Ct. Rep. Ed. 694-697 11

Williams v. Bruffy (1877)
96 U.S. 176, 185 14

Wood v. Brier (1972)
54 F.R.D. 7 28

Wortham v. Walker (1939)
128 S.W. Rep. 2d 1138 12-13

U.S. v. Burr
309 U.S. 242 18

10 Coke 101 12

TABLE OF AUTHORITIES

Statutes: Page:

UNITED STATES CODE:

Title 12 USC § 95a 18

§ 411 . . . . . 16, 24

Title 18 USC § 479 24

Title 28 USC § 451 5

§ 1251(b)(2) 4

§§ 1602 et seq. . . 29

§ 1631 5

§ 1651 4

§ 1746(1) 30

§ 1914..1, 7, 9, 17, 25

§ 2007 . . . . . i, 24

§ 2072(b) . . . . i, 17

§ 2101(c) 4

§ 2201(a) 4

§ 2403(a)(b) 5

§ 3002(15) 11

TABLE OF AUTHORITIES

Statutes: Page:

UNITED STATES CODE:

Title 22 USC § 286(e) 17

Title 31 USCA § 5103 25

Title 42 USC § 1986 28

§ 1985 28

§ 1983 28

Title 49 USC § 781 16

Title 50 USC Appendix §§ 50 . . 17

SUPREME COURT RULES:

Rule 10(c)(2) 4

Rule 13.1 and .3 4

Rule 29.4(b) and (c) 5

FEDERAL RULES OF CIVIL PROCEDURE:

F.R.CV.P. Rule 41 i

FEDERAL RULES OF APPELLATE PROCEDURE:

F.R.A.P. Rule 21 4

FEDERAL EVIDENCE RULES:

F.Evi. Rule 301 25

TABLE OF AUTHORITIES

FEDERAL EVIDENCE RULES: Page:

F.Evi. Rule 902(9) 25

CONSTITUTIONAL PROVISIONS

National:

Article I, § 10, Cl. 1 6, 19, 21-22

Article III, § 2, Cl. 1 i, 1, 20, 25

the State of Montana:

Article III, Section 12 6, 24

MISCELLANEOUS

Gold Bullion Coin Act of 1985
Public Law 99-185
99 Stat. 1177
S. 1639 . . . . . 1, 7, 10-11, 22-23

Federal Reserve Bank Act of 1913
38 Stat. 265, ch. 6
§§ 14 and 16
¶¶ 1 and 4 . . . . . 14, 16, 25

LOCAL RULES:

L.R. 290-2 9

L.R. 290-5 10

TABLE OF AUTHORITIES

LOCAL RULES: Page:

L.R. 305-4 10

Forty-First Congress
Session III, ch. 62
§ 34, pg. 419 15

Roger Sherman (1752)
Caveat Against Injustice
Original DeForeest Edition 22

J. Bentham's Theory of Legis. . . . 15-16

Senate Report 93-549 (1976) . . . 17, 21

EONs 6073, 6102, 6111, 6260 17

Congressional Record
pg. 1303, Vol. 33
March 17, 1993 - Trafficant 18

Congressional Policy
1 November 1893 A.D.
ch. 8, 28 Stat. 4 22

Bretton Woods Agreements Act
P.L. 94-564
Senate Report No. 94-1148. pg. 5935 23

Military Government and Martial Law
Third Edition Revised (1914)
William E. Birkhimer, LL.B.
Major, General Staff, U.S. Army . . . 14

CONCISE STATEMENT OF JURISDICTION

Petitioner invoked the Article III Section 2, Clause 1 raw Judicial Power Jurisdiction of the Organic Constitution for the united States of America by filing the verified record complaint in district court of the united States of America for the State of Montana District, at Missoula April 1, Anno Domini, 1997 and by tender offer legal tender gold Coins having face value of one hundred Fifty ($150.00) lawful dollars in the nature of 28 U.S.C. § 1914 by Warrant of the Gold Bullion Coin Act of 1985, P.L. 99-185, 99 Stat. 1177.

The aforesaid record complaint set forth a justiciable controversy and was drafted directly under the aforesaid original public Trust Constitution for the united States of America as promulgated

in the case of Bell v. Hood (1946), 327 U.S. 678, 90 L. Ed. 939, 66 S. Ct. 773 13 A.L.R. 2d 383.

The UNITED STATES DISTRICT COURT intervened April 9, 1997 ordering this Petitioner to pay the aforesaid fee "in legally negotiable tender, recognized by the United States of America," or suffer dismissal of the aforesaid complaint. The UNITED STATES DISTRICT COURT'S ORDER is set forth in full in Appendix A, incorportated by this reference as if set forth in full.

Petitioner refused to reclaim the legal tender payment of the filing fee within the thirty (30) day limitation so the UNITED STATES DISTRICT COURT ordered the aforesaid complaint dismissed May 27 1997, which is set forth in Appendix B incorporated by this reference as if set

forth in full.

Petitioner timely filed petition for Writ of Mandamus, or Certiorari in the Office of circuit court of the (u)nited States of America, for the ninth circuit but the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT intervened July 10 1997 to deny Petitioner's remedy in "court of the United States of America," set forth in Appendix C, incorporated by this reference as if fully set forth herein.

Petitioner then timely filed petition for Writ of Certiorari in the Office of the Clerk of the Supreme Court of the United States October 8, 1997 which the Clerk of Court returned for failure to comply with this Court's Rules of Procedure, extending the time for refiling no later than December 29, 1997 by letter dated October 29, 1997 thus making this

petition timely in accordance with Supreme Court Rules 13.1 and 3 and, 28 U.S.C. § 2101(c).

Moreover, pursuant to Supreme Court Rule 10(c)(2), the circuit court of the (u)nited States of America did not decide the filing fee issue that remains to be settled by this Court under authority of 28 U.S.C. §§ 1651(a), 1251(b)(2), 2201(a) and F.R.A.P. Rule 21, nor did the courts below exercise the Judicial Power in determining the tender offer, essentially leaving this Nationally important question of Law unanswered, and unresolved.

Petitioner does not have any other plain, speedy, or adequate remedy to correct the record below, nor redress the wrongs visited upon Petitioner through an obvious conflict of laws.

NOTICE

Petitioner hereby gives NOTICE in accordance with Supreme Court Rule 29.4(b) and (c) that 28 U.S.C. §§ 2403(a) and (b) may be applicable in court of the united States of America as defined by §§ 451 and 1631, 28 U.S.C.

Therefore, three (3) copies of this petition are provided to:

Soliciter General of the United States
Room 5614
Department of Justice
10th Street & Constitution Avenue N.W.
Washington, D.C. 20530

And,

Joe Mazurek, Attorney General
215 North Sanders, 3rd Floor
P.O. Box 201401
Justice Building
Helena, MT 59620-1401

CONSTITUTIONAL PROVISIONS

Article III, Section 12, Constitution for the State of Montana, 22 February Anno Domini, 1889 establishes:

> "No person shall be imprisoned for debt except in the manner prescribed by law,..."
>
> (emphasis added)

Article I, Section 10, Clause 1, Constitution for the (u)nited States of America, as amended Anno Domini, 1791 establishes:

> "No State shall enter into any Treaty Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law or Law impairing the Obligation of Contracts, or grant any Title of Nobility."
>
> (emphasis added)

CONCISE STATEMENT OF THE CASE

Petitioner relies upon Public Law 99-185, 99 Stat. 1177, S. 1639, 99th Congress 17 December 1985, for the proposition that the three (3) American Eagle gold bullion coins are legal tender at face value and extinguish debts. Accordingly, Petitioner filed the record verified complaint and extinguished the filing fees in full accord and satisfaction of the contract provided at 28 U.S.C. § 1914 on April 1, 1997 A.D. demonstrated at Appendix E, incorporated by this reference as if set forth in full.

The aforesaid complaint was drafted directly under the Organic Constitution aforesaid in the nature of a Bell v. Hood styled case or controversy requiring the district court to pass upon the question whether the facts stated and declared give rise to a cause of action for trespass

under State law. Bell v. Hood (1946) 327 U.S. 678, 90 L. Ed. 939, 66 S. Ct. 773 13 ALR 2d 383, cf. Hurn v. Oursler, 289 U.S. 238, 77 L.Ed. 1148, 53 S.Ct. 586 and at 13 ALR 2d 395-396 fn 1, Phoenix Oil Co. v. Mackenzie Oil Co. (1932, DC Del.) 56 F.2d 1070; and Holt v. Indiana Mfg. Co. (1900) 176 U.S. 68, 44 L. Ed. 374, 20 S. Ct. 272. The latter case cited above provides "if state legislation impaired the obligations of contract, or deprived one of property without due process of law, remedies were to be found in the first section of the Act of August 13 1888 giving the circuit court of the united States of America jurisdiction to to resolve the dispute;" however, the circuit court failed to exercise the judicial duty to determine whether the dismissal below was warranted by current

law, and whether Lonnie Herman was vested with or delegated the authority to arrest Petitioner without Warrant of Law, in foreign municipal venue under colour of law.

Therefore, Petitioner petitions this Supreme Court to resolve the issues of law of record in the proceedings below and correct the record, accordingly.

ARGUMENT

28 U.S.C. § 1914 requires the district court Clerk to collect a fee of one hundred Fifty ($150.00) dollars by the party instituting suit, as amended June 19, 1986 P.L. 99-336, at Section 4(c).

Local Rule 290-2 FORM OF SECURITY provides:

> "Whenever a security is required to be given in unspecified form, except in bankruptcy proceedings, and except when given to secure appearance of a defendant in a criminal case, it shall

> be given in substance and form as provided by the laws of the State of Montana."

Local Rule 290-5 DEPOSIT OF MONEY OR UNITED STATES OBLIGATIONS IN LIEU OF SURETY provides:

> "In lieu of surety in any civil case there may be deposited with the Clerk of the Court lawful money or negotiable bonds or notes of the United States."

Local Rule 305-4 allows the Clerk of the district court of the united States of America to accept for deposit all forms of "Lawful money or negotiable bonds or notes of the United States."

Public Law 99-185, 99 Stat. 1177, S. 1639, 99th Congress, December 17, 1985 established the three (3) American Eagle gold bullion coins as "legal tender at face value," which the Office of Clerk Judge and Justice have no discretion to deny.

This Supreme Court has consistently held that "it is the amount, not the kind" in a contract to pay money in the obligation out of which the debt arises. Thompson v. Butler (January 7, 1878), 95 U.S. 540 at 542, S. C. Rep. Ed. 694-697.

Time in no way has eroded this holding despite an obvious conflict of law concerning the economic policy of the agent Congress of the (u)nited States of America in Trust to the "United States" as defined at 28 U.S.C. § 3002(15).

Petitioner has exercised the politically correct viable alternative to the insolvency and bankruptcy of the United States, by legal tender Lawful money coin in extinguishment of the debt obligation created by filing the civil suit aforesaid in light of Public Law 99-185 set forth in pertinent part in Appendix D, incor-

porated by this reference as if fully set forth herein. As stated in the case of Steward v. Kahn, 78 U.S. 504, "The intent of the legislators constitutes the law." "The voice of legislatures is a living voice," 10 Coke 101, and Petitioner does not consent, nor is legally capable of consenting to the exercise of unlawful authority, ipso facto not discharging the filing fee in "negotiable tender" as appears in Appendix B-2, under a plan or system of "cooperative federalism" demonstrated in New York v. U.S. (1992) 112 S. Ct. 2408, 120 L. Ed. 2d 120, 60 U.S.L.W. 4603, or literally participate in the "American experiment in Democracy" near an end, at the institution and implementation of a sovereign de facto government, Wortham v. Walker, Commissioner of General Land Office, et al. (1939) 128

S.W. Rep. 2d 1138, wherein it was held: (1) ". . . when a territory is acquired by treaty, cession, or conquest, the rights of the inhabitants to property are respected and sacred," (2) ". . . It is no doubt the received doctrine that in cases of ceded or conquered territory the rights of private property . . . are respected."

A de facto government exists after it has expelled the regularly constituted authorities from the legitimate seats of power and the public offices, and established its own functionaries in their places, so as to represent in fact the sovereignty of the nation." Samuel Thomas Sheriff v. William Taylor (1869) 42 Miss. 651, 703; Keppel v. Petersburg R. Co. (1868) 14 Fed. Cas. 357, 370 (Case No. 7,722). "A government de facto . . . is a

government that unlawfully gets the possession and control of the rightful legal government . . . and claims to exercise the powers thereof." Williams v. Bruffy (1877) 96 U.S. 176, 185 (1877).

Thus, it is the creditors of this contrived insolvency and bankruptcy of the (u)nited States of America through the congressional act of 23 December 1913, 38 Stat. 265, ch. 6, §§ 14 and 16, ¶¶ 1 and 4 respectively, that have established their own Federal (fuedal) government municipal, demonstrated by William E. Birkhimer, LL.B., Major, General Staff U.S. Army, Third Edition (Revised) 1914 entitled "Military Government and Martial Law" and entered in the Office of Librarian of Congress at Washington, District of Columbia, in the year 1904 by Hudson-Kimberly Publishing Company, according to

Act of Congress in the year 1892 by William E. Birkhimer. This municipal law was effected when Congress adjourned sine die December 1860 and April 19, 1861 when President Lincoln by Executive Proclamation declared martial law on behalf of the southern States in rebellion, never to return to the Constitution appointed day for Lawful Civil Government purposes. On February 21, 1871, the Forty-First Congress Session III, Chapter 62, at Section 34, pg. 419 provided a government for the District of Columbia by adopting the Original public Trust Constitution Articles as the municipal law of the District of Columbia, territories enclaves and insular possessions, to effect none other than municipal government de facto. And just as Property and Laws are born together and die together, take away laws, and property ceases. J. Bentham's

Theory of Legislation, 139; League v. De Young (1850) 52 U.S. 185, 13 L. Ed. 657. This scenario effected "seizen in law" so as to make American's subject to the "use" that created the franchise to augment Federal Revenue ab initio, without which the terms "market value, i.e., $1050" upon which the district court of the united States of America, the State of Montana District at Missoula, could have given a meaning than that alleged to be prescribed by First Bank, Appendixes A-2 and B-2, i.e., Federal Reserve script or Bills of Credit that, at best, do not extinguish debt, but rather transfer debt by assignment. See; e.g.; Stanek v. White (1927) 215 N.W.R. 784; and 38 Stat. 265 ch. 6, §§ 14 and 16, ¶¶ 1 and 4; 12 U.S.C. § 411. But, see: 49 U.S.C. § 781.

Just as water cannot rise higher than

its source, the authority of the district court of the united States of America cannot ascend to any greater dignity or validity than the grant through which the authority is derived. See: 28 U.S.C. § 2072(b), thus the alleged "market value" by First Bank is without validity so as to preclude the extinguishment of debt pursuant to 28 U.S.C. § 1914.

Without doubt, the United States is a bankrupt entity via EON 6073, 6102, 6111 and 6260; Senate Report 93-549, pgs. 187 and 594, Sixty-Fifth Congress, Session I chs. 105-106, codified at 12 U.S.C.A. § 95(a) and 50 U.S.C.S. Appendix §§ 50 et seq.; Perry v. U.S. (1935) 294 U.S. 330-381, 79 L.Ed. 9121. The "United States" as Corporator, 22 U.S.C.A. § 286(e) lays down its sovereignty and takes on that of a private citizen and, can exercise no

power which is not derived from the corporate charter. See, e.g., The Bank of the United States v. Planters Bank of Georgia, 6 L. Ed. (9 Wheat) 244; U.S. v. Burr, 309 U.S. 242.

On March 17, 1993, pg. 1303, Vol. 33 Congressional Record, Congressman Traficant stated: "Mr. Speaker, We are now here in Chapter 11. Members of Congress are official trustees presiding over the greatest reorganization of any bankrupt entity in world history, the U.S. government."

So it is, as historically demonstrated above, the intervening UNITED STATES DISTRICT COURT simply does not have the Judicial Power, authority, nor right to dispose of the complaint allegations by ascribing a "market value" to the established filing fee, at the suggestion or stipulation of First Bank whose charter

is Nul Tiel Corporation in violation of Article I, Section 10, Clause 1, Constitution for the (u)nited States of America.

Thus, "cases arise under Constitution or Federal laws whenever their correct decision depends upon construction of either or when right of party may be sustained by one construction or defeated by another where complaint is so drawn as to seek recovery directly under Constitution or laws of the United States." Bell v. Hood (1946) supra, 13 ALR 2d at 383. As such Petitioner is a free white man on the Land i.e., the soil of Flathead county, the State of Montana, of solvent means and not a debtor in possession, or bankrupt.

"It is only where rights, in themselves appropriate subjects of Judicial cognizance are being, or about to be affected prejudicially by application or

enforcement of statute, that statute's validity may be called in question by suiter and determined by exertion of Judicial Power." Texas v. Interstate Comm. Com. (1922) 258 U.S. 158, 66 L.Ed. 531, 42 S.Ct. 261. Petitioner is "the State of Montana" in fact and point of law, giving the Supreme Court the right, power and prerogative to exercise the original Article III raw Judicial Power in this live case or controversy, because: (1) All of the public constitutional Offices created February 22, 1889 A.D. have been captured by the Federal Government via the contrived insolvency and bankruptcy aforesaid, thus leaving those holding said Offices mere "Actors" under color of law, (2) Said "Actors" Oaths of Office and Fidelity Bonds are constitutionally deficient, and (3) all said "Actors" have materially

breached said Organic Constitutions by participating in "cooperative federalism" however, even though abridgement has in fact occurred (Senate Report 93-549), a declared emergency March 6, 1933 does not create power, Home Bldg & Loan Assoc. v. Blaisdell (1934) 290 U.S. 426, so as to bind Petitioner to discharge (pay) the debt aforesaid and in the manner so ordered by the district court below, because no one or group of people have the right, power, or authority to force this Petitioner to abrogate Article I, Section 10, Clause 1, by payment in any Thing other than gold and silver Coin of Intrinsic Value which at Common Law is the only ways or means to pass res and title from debtor to creditor, and the sole means to obtain Remedy by exercise of the Judicial Power, by contract with the

Office created for that purpose.

Roger Sherman aka Philoenomos in 1752 wrote the treatise entitled "A Caveat Against Injustice or An Inquiry into the Evils of a fluctuating Medium of Exchange" in the Colony of Connecticut, from the Original DeForeest Edition, New York, viz:

> " . . . instead of having our Properties defended and secured to us by the Protection of the Governemnt under which we live, we should be always exposed to have them taken from us by Fraud at the Pleasure of other Governments, who have no right of Jurisdiction over us, . . . "

Roger Sherman authored Article I Section 10, Clause 1, Constitution for the (u)nited States of America, which later was codified at 31 U.S.C..§ 371, becoming the Declared Policy of Congress in 1893 1 November 1893 A.D., ch. 8, 28 Stat. 4 and time in no way has eroded such law and policy, recognized by the 99th

Congress, 99 Stat. 1177, Public Law 99-185, December 17, 1985, S. 1639 Appendix D, as a means to repair the aforesaid breaches by reduction of the alleged National Debt, meaning "extinguishment thereof," and a unique means to restoration of Lawful Civil Government.

However, at Appendix D-6 and D-7 is found reference by President Ronald Reagan, December 17, 1985, to "international obligations" and construed literally must mean the Bretton Woods Agreements Act, P.L. 94-564, Senate Report No. 94-1148, beginning at page 5935 wherein it is found "The dissolution of the monetary system created by the Bretton Woods Agreements Act can be traced to the early 1960s. The monetary system during this time period made a de facto transition from a gold standard to a dollar

standard" which can mean nothing more than 12 U.S.C. § 411, 38 Stat. 265, obligations of the United States which is no standard of value at all as worthless unredeemable securities of the Federal Corporation dba United States in Trust by the (u)nited States of America since that and including February 21, Anno Domini, 1871. But, see: 18 U.S.C. § 479.

"States" cannot sink such Bills of Credit out of circulation as money, viz: Memphis Bank & Trust Co. v. Riley C. Garner (1983) 459 U.S. 392, 103 S.Ct. 692 74 L. Ed. 2d 562 at 1156, any more than Lonnie Herman is delegated the authority to arrest and incarcerate Petitioner without Warrant of Law in violation of 28 U.S.C. § 2007(a) and Article III Section 12, Constitution for the State of Montana, 22 February A.D., 1889.

SUMMARY OF ARGUMENT

Petitioner cannot be required to pay or discharge the filing fees, 31 U.S.C.A. § 5103, with Federal Reserve Notes in light of timely objection thereto, see MacLeod v. Hoover (1925) 159 La. 244, 105 A. 305, to establish (1) an Article III court of the united States of America, (2) a live case or controversy, (3) Right to Remedy, (4) without prejudicial reversal of the Evidence Rules concerning presumptions, Evi.Rules 301 as set forth in Evi. Rule 902(9), 28 U.S.C. and contrary to the aforesaid complaint material factual averments conceded by the real party in interest, Lonnie Herman, for failure to answer said complaint duly executed and delivered with summons.

Thus, the circuit court of the united

States of America, ninth circuit, Case Number 97-70648, could neither ascribe a mootness to the civil complaint below since the underlying criminal case, No. CR-94-50-CCL, continues to cause Petitioner adverse collateral legal consequences so much so to give this instant case actuality which is necessary to make a justiciable case or controversy by life threatening police stalking of Petitioner, Sibron v. New York (1968) 392 U.S. 40, 20 L. Ed. 2d 917, 88 S. Ct. 1889, 44 Ohio Ops. 2d 402; nor neglect to address and resolve the contract dispute below by total avoidance thereto, as if to be dispositive of the aforesaid complaint allegations, in error.

In effect, Petitioner is deprived of an adversary trial on the merits, without a full, fair, or meaningful opportun-

ity to expose the gigantic fraud set out above in pertinent part, nor obtain any Remedial Justice by the concerted efforts of these Actors' state and Federal, to hinder or obstruct Justice, leaving Petitioner with this Supreme Court as Petitioner's court of first and last resort, so help Me Almighty God, Amen.

The implications are enormous, and of such intense Constitutional magnitude that every American has a right to know a right to be apprised, and a right to make an informed decision with full knowledge of the facts, and full disclosure of the law, as well as the legal ramifications.

The implication of a trust is the implication of every duty proper to a trust. Let it therefore be resolved by a determination of the Truth, rather than

by a determination that the Truth remain hidden. Wood v. Brier (1972) 54 F.R.D. 7.

CONCLUSION

The maxim, ignoratis legis excusat neminem (ignorance of the law is no excuse), cannot be invoked in this live case or controversy.

The Law of the Land provides both legal and commercial remedies for people who have been damaged by State and Federal Actors, acting under color of law to deprive people of substantive rights through ostensibly governmental actions, Griffin v. Breckinridge (1971) 403 U.S. 88, 29 L. Ed. 2d 338, 91 S. Ct. 1790, or who failed to prevent a crime (42 U.S.C. §§ 1986 1985, and 1983) including trespass of jurisdiction by Lonnie Herman aspiring to enforce "cooperative federalism" upon

and against this Petitioner, contrary to the jurisdictional immunities set forth in the Foreign Sovereign Jurisdictional Immunities Act, Public Law 94-583, October 21, 1976, codified at 28 U.S.C. §§ 1602 et seq. and the substantive Law of this Land heretofore setforth for any reason other than the arrest or aprrehension of people committing crimes under lex loci municipal law, City of Whitefish, the State of Montana, on the soil of Flat-head county.

WHEREFORE, Petitioner prays to Almighty Yhwh El Ellyon Sabbaoth to cause the Will of this Supreme Court to grant the Writ petitioned for to forthwith issue and, upon thorough examination of the record below, correct all error apparent thereupon, there being no Just reason for delay to set the ninth circuit court

record in such manner as will allow this Petitioner to proceed with prosecution of the verified civil complaint in court of the (u)nited States of America, the State of Montana District, at Missoula.

Dated: This _____ day, Anno Domini, nineteen hundred Ninety seven and, in the Two-hundred Twentieth year of the Independence of America, the Great Amen.

Respectfully submitted in the nature of 28 U.S.C. § 1746(1), and under pain or penalty of bearing false witness.

_____

Kermit Franklin Junior, Isbell
in care of: general delivery
at or near Kalispell, [59901]
the State of Montana, of the
(u)nited States of America
North America, Urantia.

APPENDIX A

CV 97-54-M-DWM - Order

Dated and Filed April 9, 1997

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

KERMIT FRANKLIN JUNIOR, ISBELL,

Plaintiff,

v.

CHARLES C. LOVELL, individually,
LEIF B. ERICKSON, individually,
LONNIE HERMAN, individually,
KRIS A. MCLEAN, individually,
and Ex Rels 1 through 100,
inclusive,

Defendants.

CV 97-54-M-DWM

ORDER

Plaintiff lodged a Complaint on April 1, 1997. He paid the filing fee with three American Eagle gold bullion coins. The filing fee is set by statute, and is currently one hundred and fifty dollars ($150). See 28 U.S.C. § 1914. Because there has been an improper payment of the filing fee, the bullion must be rejected and the

filing of the complaint held in abeyance pending payment of the fee with legal tender recognized by the United States of America.

The gold coins offered by Plaintiff are not negotiable tender. They are not acceptable for deposit in ordinary commerce. Furthermore, the coins have a market value which greatly exceeds the amount of the filing fee (on April 2, 1997, they were worth approximately $1050) so the court is placed in the awkward, and untenable situation, of accepting remittance in an amount unauthorized by statute. The "market value" of the non-negotiable goods or services cannot be used to pay filing fees in this court.

Wherefore, IT IS HEREBY ORDERED:

(1) The Clerk of Court will hold the gold coins for thirty (30) days, or until reclaimed by Plaintiff, whichever occurs first.

(2) Plaintiff shall pay the $150 filing

fee in legally recognizable negotiable tender, recognized as such by the United States of America.

(3) No further action will be taken in this case until Plaintiff pays the filing fee in negotiable tender.

(4) The clerk is directed to notify the court on expiration of the thirty (30) days if the bullion has not been returned to or reclaimed by the plaintiff. In such event an order of dismissal will be entered. The plaintiff is cautioned to review his complaint, and in particular the legal defenses available to it.

DATED: April 9, 1997.

/s/ Donald W. Molloy
Donald W. Molloy
United States District Judge

APPENDIX B

CV 97-54-M-DWM - Order

Dated May 27, 1997

Filed May 29, 1997

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

KERMIT FRANKLIN JUNIOR, ISBELL,

Plaintiff,

v.

CHARLES C. LOVELL, individually,
LEIF B. ERICKSON, individually,
LONNIE HERMAN, individually,
KRIS A. MCLEAN, individually,
and Ex Rels 1 through 100,
inclusive,

Defendants.

CV 97-54-M-DWM

O R D E R

By Court's Order dated April 9, 1997 plaintiff was instructed to pay the $150.00 filing fee for this case. He was told to pay the money to the Clerk of Court in negotiable tender and to reclaim his American Eagle gold bullion coins. Plaintiff's failure to comply with the laws enacted by Congress, and the rules adopted

by the federal courts concerning the payment of filing fees, together with his disregard for the instructions and orders of this Court, requires dismissal of the complaint.

In response to plaintiff's argument and exception to the Court's April 9, 1997 order, a second effort was made to deposit the gold bullion, and thus satisfy the payment of the filing fees as required by law. The Clerk of Court attempted to deposit the American Eagle gold bullion coins with First Bank on May 21, 1997. The coins were not accepted for deposit by the bank. The bank rejected the effort of the Clerk of Court to deposit the bullion.

To date, plaintiff has not paid the filing fee in negotiable tender. Plaintiff was advised of the consequences of a failure to comply with the Court's instructions. Persons who invoke the jurisdiction of this Court must comply with

statutory requirement, local rules, and this Court's Orders. A failure to do so warrants dismissal of the case with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. In making this determination, I have taken into account the total lack of legal merit in the allegations of the putative complaint. Dismissal would be proper under Rule 12 F.R.Civ.P.; see also, Rule 16 F.R.Civ.P.

Wherefore, IT IS HEREBY ORDERED:

(1) This case is DISMISSED WITH PREJUDICE.

(2) The Clerk of Court is instructed that no further filings are to be accepted in this case. No documents shall be lodged or filed in this case, nor accepted from the pro se litigant acting as plaintiff herein.

(3) The Clerk of Court shall return plaintiff's American Eagle gold bullion coins to him by recorded delivery

insured to the full value of the coins.

(4) The Clerk of Court is instructed to include a copy of the First Bank letter with this order and to docket the letter so that it is a formal part of the record.

(5) Pro se plaintiff is advised that the Rules of Civil Procedure authorizes an appeal from this Order to the Ninth Circuit of Appeals. The Notice of Appeal must be filed within (thirty) days of the entry of this order.

DATED: May 27, 1997.

/s/ Donald W. Molloy
Donald W. Molloy
United States District Judge

APPENDIX C

circuit court ORDER

DATED JUL 10 1997

FILED JUL 14 1997

C-1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KERMIT F. ISBELL, JR.,

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA (MISSOULA);

Respondent,

LONNIE HERMAN,

Real Party in Interest.

FILED JUL 10 1997

CATHY A. CATTERSON, CLERK

U.S. COURT OF APPEALS

No. 97-70648

DC# CR-94-50-CCL

Montana (Missoula)

FILED JUL 14 1997

LOU ALEKSICH, JR. CLERK

By MARILYN G. SEWE

DEPUTY CLERK

CV 97-54-M-DWM

ORDER

Before: HUG, Chief Judge, KOZINSKI and LEAVY, Circuit Judges

Petitioner has not demonstrated that effective post-conviction review of the district court's ruling that petitioner challenges is unattainable. See Bauman v. United States District Court, 557 F.2d 650, 654-55 (9th Cir. 1977). Moreover there is a compelling interest in the prompt resolution of criminal actions. See Flanagan v. United States, 465 U.S. 259, 265 (1984). Accordingly, the petition for writ of mandamus is denied. Petitioner's "alternative petition for writ of certiorari" is denied.

No motions for reconsideration, rehearing, clarification, or any other submissions shall be filed or entertained in this closed docket.

C-3

ORIGINAL DOCKETED

A TRUE COPY

CATHY A. CATTERSON

Clerk of Court

ATTEST

JUL 10 1997

by: _____(unsigned)

Deputy Clerk

APPENDIX D

EXCERPTS FROM Public Law 99-185

[99 Stat. 1177]

(December 17, 1985)

S. 1639

99th Congress

PUBLIC LAW 99-185-DEC. 17, 1985

[99 Stat. 1177] 99th Congress

An Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SHORT TITLE

Section 1. This Act may be cited as the "Gold Bullion Coin Act of 1985."

LEGISLATIVE HISTORY - S. 1639:

CONGRESSIONAL RECORD, Vol. 131 (1985)

Nov. 14, considered and passed Senate.

Dec. 2, considered and passed House.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 21, No. 51 (1985)

Dec. 17, Presidential Statement.

Senate Bill Number 1639, page 32157:

"(7) A fifty dollar gold coin that is 32.7 millimeters in diameter, weighs 33.931 grams, and contains one troy ounce of fine gold."

EFFECTIVE DATE

SEC. 3. This Act shall take effect on October 1, 1985,..."

Mr. Exon. Mr. President, I am extremely pleased that the Senate will now act on passage of S. 1639, the American Eagle Gold Bullion Coin Act.

Today, the Senate has an opportunity to restore an American tradition. This landmark legislation brings regular issue gold coinage back into the U.S. currency for the first time since 1933.

Page 32159:

Mr. Murkowski...Since the U.S. gold bullion coin will be legal tender currency of the United States. I expect that it will have sales which will match the combined gold bullion sales of all foreign countries combined.

House Report, page 33578:

Mr. Annunzio..."with face values of $50, $25, $10, and $5, respectively. The coins will be legal tender for their face values like all U.S. coins."

The Treasurer, Katherine Ortega, has commented, in a letter to Senator Farn dated April 19, 1985: "All legal tender coins should have a face value. The necessity and wisdom of ascribing a definite value to each of our coins is evidenced by nearly two hundred years of coinage legislation."

"...most observers agree that its legal-tender status should be a big plus for the coin - psychologically and also in more tangible ways."

"And the profits from the sales will be used solely to reduce the national debt."

House Report, page 33579:

Mr. Hiler..."to provide American citizens with a U.S. alternative to the South African Krugerrand."

"This legislation provides for the minting of so-called fine coins, which differ from traditional U.S. coinage in terms of size and fineness of gold."

House Report, page 33580:

Mr. Roth..."Second, it will make our budget deficit smaller, since the profits from coin sales will be used to reduce the national debt."

House Report, page 33581:

Mr. Crane..."I think it is a long overdue reassertion of a lost congressional prerogative, in fact lost for 50 years in this country. The most important aspect of this is that if one goes back and traces the constitutional origins of the minting of gold coins, it was as the result of the Revolutionary experience

with fiat money, the so-called Continental notes, which were not convertible and in fact sank to about 2 cents on the dollar. For many years we made reference to 'not worth a Continental' in describing the value of paper money as currency."

"I would like to embrace this legislation as a giant stride forward toward the money system envisioned by the Founding Fathers of this great Nation. Under Article I, section 8...Congress is given the power "to coin money." Over the last 50 years, since the Gold Reserve Act of 1934, Congress has ignored its duty to maintain a monetary system based upon hard currency and has instead delegated to the Federal Reserve System the right to print paper currency."

"...I have been a longtime advocate of restoration of a system of honest money."

"...there is a great temptation on the part of the Federal Reserve to monetize

the debt."

"...is a monumental step toward that standard of honest money."

Mr. Lewis..."but if in the future, the Federal Reserve decided to turn on the printing press and thereby devalue our paper dollar, people could look to gold coins as an alternative, reflecting the real worth as they see it in terms of what currency ought to be all about."

House Report, page 33582:

"For the record, I want to make explicit a few of the issues that we intend this coinage to serve. The gold coins created by this act are legal tender of the United States - they are monetary instruments, in every sense of that concept,..."

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol 21, No. 51 (December 17 1985), Ronald Reagan:

"Specifically, enactment of this legislation may raise questions about the willingness of the United States to honor its international obligations."

Note: As enacted, S 1639 is Public Law 99-185, approved December 17.

APPENDIX E

RECEIPT FROM THE CLERK OF COURT

Dated April 1 Anno Domini, 1997

E-1

Page One of One, TENDER OFFER/RECEIPT:

RECEIPT FROM THE CLERK OF THE COURT

district court of the united States of America, Original Article III Jurisdiction, the State of Montana District, Case Number CV 97-54-M-DWM.

Received on this date, One-hundred Fifty Lawful Money Dollars ($150.00), face value gold coin, consisting of:

1) $ - One 1990 Fifty Dollar united States of America gold coin (MCMXC);

2) $ - One 1990 Fifty Dollar united States of America gold coin (MCMXC);

3) $ - One 1990 Fifty Dollar united States of America gold coin (MCMXC);

As tender offer costs of filing the above Complaint, Case Number CV 97-54-M-DWM, from the Free, White Inhabitant Kermit Franklin Junior, Isbell, of solvent means.

Without prejudice to Kermit Franklin Junior, Isbell's political choice to tender offer united States of America gold coin

for filing the above Complaint.

Executed this 1st day of April, Anno Domini, 1997.

/s/ Lou Aleksich, Jr.
Clerk of district court of the
united States of America

/s/ Marilyn G. Lovell
Deputy Clerk of the district
court of the united States
of America

/s/ Mary Nubles
Deputy Clerk of the district
court of the united States
of America

The term "district court of the united States of America" relative to Title 5 sections 81 et seq., page 515, West's 1996 Edition, Federal Civil Judicial Procedure and Rules, 28 United States Code is used in lieu of "UNITED STATES DISTRICT COURT" for administrative purposes in the nature of 28 U.S.C. § 451 "court of the United States."